



Order F25-18

## THE MINISTRY OF HEALTH

Carol Pakkala  
Adjudicator

March 11, 2025

CanLII Cite: 2025 BCIPC 22  
Quicklaw Cite: [2025] B.C.I.P.C.D. No. 22

**Summary:** An applicant requested records from the Ministry of Health (Ministry) pursuant to the *Freedom of Information and Protection of Privacy Act* (FIPPA). The Ministry acknowledged it did not respond to the applicant's access request within the time limit required by s. 7 of FIPPA. The adjudicator found the Ministry had not fulfilled its duty under s. 7 of FIPPA and ordered it to respond to the access request by a specified date.

**Statute Considered:** *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c. 165, ss. 6(1), 7(1), 7(2), 10(2).

## INTRODUCTION

[1] This inquiry concerns whether the Ministry of Health (Ministry) complied with its duty to respond to an access request made by the applicant within the time limits required by s. 7 of the *Freedom of Information and Protection of Privacy Act* (FIPPA).

[2] Section 7 establishes the statutory time limits within which a public body is required to respond to an access request. While s. 7(1) requires a public body to respond to an access request within 30 days of receiving the request, s. 7(2) allows a public body to extend the time for responding in certain circumstances.

[3] The relevant background facts are not in dispute. The applicant made an access request to the Ministry on October 7, 2024. In accordance with s. 7(2)(a), the head of the Ministry extended the deadlines to respond to the request to

January 7, 2025.<sup>1</sup> The Ministry did not respond to the access request by the extended date and has still not responded as of the date of this inquiry.<sup>2</sup>

[4] On January 16, 2025, the applicant complained to the Office of the Information and Privacy Commissioner (OIPC) that the Ministry's response to the access request was late.<sup>3</sup> The OIPC notified the Ministry on January 22, 2025 that it had received this complaint. The Ministry acknowledges that it failed to respond to the applicant's access requests in accordance with the statutory time limits imposed by s. 7.<sup>4</sup>

### **Preliminary Matter – Affidavit Evidence**

[5] The applicant objects to the affidavit evidence relied upon by the Ministry in this inquiry. The applicant says the affidavit does not follow OIPC guidelines, in particular because it is not from someone with direct knowledge and because it is based on hearsay evidence.<sup>5</sup> The Ministry responds by saying hearsay evidence is admissible in administrative proceedings. The Ministry further says the affidavit should be given considerable weight because it is uncontroverted and affirmed and identifies the source of information and belief.<sup>6</sup>

[6] In general, the strict rules of evidence that apply to court proceedings do not apply to administrative proceedings, including this inquiry.<sup>7</sup> For example, hearsay is admissible if it is "logically probative and may fairly be regarded as reliable."<sup>8</sup> Given the flexible approach to evidence in administrative proceedings, I am satisfied that it is not necessary in this case to make preliminary rulings on the admissibility of evidence. I will consider the affidavit submitted, assess its credibility and reliability, and determine what weight it should be given.

### **ISSUES**

[7] As I will explain below, I find the issues to be decided in this inquiry are as follows:

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<sup>1</sup> The Ministry took an extension based on s. 10(1)(b) – volume of records and 10(1)(c) – need for consultation with another public body.

<sup>2</sup> Ministry's initial submission at para 3.

<sup>3</sup> Applicant's complaint to the OIPC of January 16, 2025, communicated to the Ministry on January 22, 2025.

<sup>4</sup> Ministry's initial submission at para 9.

<sup>5</sup> Applicant's submission at paras 30-32.

<sup>6</sup> Ministry's reply submission at paras 8-10.

<sup>7</sup> Order F21-02, 2021 BCIPC 2 (CanLII) at para 4 citing *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Bombardier Inc. (Bombardier Aerospace Training Center)*, 2015 SCC 39 at paras 67-68; and Order F08-22, 2008 CanLII 70316 (CanLII) at para 28.

<sup>88</sup> Order F21-02, 2021 BCIPC 2 (CanLII) at para 4 citing *Cambie Hotel (Nanaimo) Ltd. v. British Columbia (General Manager, Liquor Control and Licensing Branch)*, 2006 BCCA 119 at para 36; Order F20-48, 2020 BCIPC 57 (CanLII) at para 34.

1. Did the Ministry comply with its duty to respond to the applicant's access requests within the timelines in s. 7 of FIPPA?
2. If the Ministry did not comply with its duty under s. 7, what is the appropriate remedy?

[8] While the Notice of Inquiry here did not list s. 6(1), I can see that the Ministry's submissions outline s. 6(1) as an issue. For this reason, I will address the relationship between ss. 6 and 7.

[9] Section 6(1) states, "The head of a public body must make every reasonable effort to assist applicants and to respond without delay to each applicant openly, accurately and completely."

[10] In two recent orders<sup>9</sup>, the OIPC's Director of Adjudication explained why it is neither necessary nor appropriate to consider s. 6(1) where the issue between the parties is whether or not the public body's response to the applicant's access request was late. The Director explained:

[5] Past OIPC inquiries and orders have included s. 6(1) as an issue to be decided when an applicant alleges a public body has failed to respond within the time required under s. 7(1).<sup>10</sup> Those orders have concluded a public body that has failed to respond within the time required under s. 7 has not fulfilled its s. 6(1) duty to make every reasonable effort to respond without delay.<sup>11</sup> However, I do not think it is necessary to add or decide s. 6(1) when s. 7 compliance is at issue: a public body will necessarily have failed to discharge its duty under s. 6(1) if it does not respond to an applicant's request within the timelines specified in s. 7.

[6] Whether a public body has met its duty to respond to an access request within the timelines specified in s. 7, can be answered in only two ways: either "it did" or "it did not". Adding s. 6(1) to the inquiry incorrectly suggests that a public body can defend its failure to comply with s. 7 by arguing that it made every reasonable effort to respond without delay. No such reasonable efforts language exists in s. 7.

[7] Section 6(1) creates a public body's overarching duty to assist applicants, but it does not say precisely what procedural steps are required of a public body. Sections 7 and 8 are the provisions to do that. Section 8 specifies what exactly a public body must tell an applicant in its response under s. 7, and s. 7 says when the response must be provided. The reasonable effort language in s. 6(1) is not a shield or defence to a contravention of the requirements imposed by s. 7. The duties

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<sup>9</sup> Order F25-08, 2025 BCIPC 8 (CanLII) and Order F25-09, 2025 BCIPC 9 (CanLII).

<sup>10</sup> For example, Order F06-04, 2006 CanLII 13533 (BCIPC) at paras 8-9.

<sup>11</sup> Order F06-04, 2006 CanLII 13533 (BCIPC) at paras 8.

established at s. 6(1) are general, but do not operate to override other mandatory obligations in other sections of the Act.

[8] As former Commissioner Loukidelis explained, a public body that fails to respond when required under s. 7 cannot be found to have fulfilled its s. 6(1) obligation to make every reasonable effort to respond without delay.<sup>12</sup> Simply put, the “inability to respond as required by law cannot – whether or not it was due to an excess of demand over the resources available to respond – wipe away the fact that the responses were late.”<sup>13</sup>

[9] Therefore, I will not make any finding about whether the Ministry complied with its duty under s. 6(1) to make every reasonable effort to respond without delay. In addition, while I have read the Ministry’s explanation about why it did not respond to the request within the time limits required by s. 7(1), that explanation is not relevant to deciding if the Ministry complied with its duty under s. 7(1).<sup>14</sup>

[11] In another recent order, the Director’s reasoning and approach was applied to the extended time limit under s. 7(2).<sup>15</sup>

[12] I agree with the reasoning and approach in the above referenced orders, and I adopt them here. Therefore, for the reasons set out in those orders, I will not consider the s. 6(1) issue in this inquiry. While I have read the Ministry’s explanation about the reasons for its delay in responding, I find that that explanation is not relevant to the issue of whether the Ministry complied with its duty under s. 7.

## **BURDEN OF PROOF**

[13] The Ministry acknowledges it did not respond to the applicant’s requests within the time requirements of FIPPA. Section 53(3) provides that a public body’s failure to respond in time to a request for access to a record is to be treated as a decision to refuse access to the record.

[14] Section 57(1) provides that at an inquiry into a decision to refuse an applicant access to all or part of a record, it is up to the head of the public body to prove that the applicant has no right of access to the records or part. Therefore, I

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<sup>12</sup> Order F06-04, *Ministry of Water, Land and Air Protection*, 2006 CanLII 13533 (BC IPC) at paras 7-9.

<sup>13</sup> Order 02-38, *Office of the Premier and Executive council operations and Ministry of Skills Development and Labour*, Re, 2002 CanLII 42472 (BC IPC) at para 23.

<sup>14</sup> Order F25-09, 2025 BCIPC 9 at paras 5–9. *Citations specific to the facts of the inquiry removed*. See also Order F25-08, 2025 BCIPC 8 at paras 7-11.

<sup>15</sup> Order F25-11, 2025 BCIPC 12 (CanLII).

find that the Ministry has the burden to prove that that it met its duty to respond to the applicant's access request as required by s. 7 of FIPPA.<sup>16</sup>

## DISCUSSION

### *Relevant Legislation*

[15] Together, ss. 7(2)(a) and 10(2)(a) of FIPPA empower the Commissioner to grant permission to the head of a public body to extend the time limit for a public body to respond to an access request for a period longer than 30 days in certain circumstances. The relevant parts of ss. 7 and 10 are as follows:

#### **Time limit for responding**

7(1) Subject to this section and sections 23 and 24 (1), the head of a public body must respond not later than 30 days after receiving a request described in section 5 (1).

(2) The head of the public body is not required to comply with subsection (1) if

(a) the time limit is extended under section 10, or ...

#### **Extending the time limit for responding**

10(1) The head of a public body may extend the time for responding to a request for up to 30 days if one or more of the following apply: ...

(2) In addition to the authority under subsection (1), with the permission of the commissioner, the head of a public body may extend the time for responding to a request as follows:

(a) if one or more of the circumstances described in subsection (1)  
(a) to (d) apply, for a period of longer than the 30 days permitted under that subsection;

### ***Did the Ministry comply with its duty to respond to the access request within the timelines in s. 7?***

[16] In this case, there is no dispute between the parties that:

- The applicant made an access request to the Ministry on October 7, 2024.<sup>17</sup>
- The Ministry extended the deadline to respond to the request as permitted under s. 10(1)(b) and 10(1)(c) until January 7, 2025.

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<sup>16</sup> This determination is consistent with past orders. See for example Order F25-08, 2025 BCIPC 8; Order F25-09, 2025 BCIPC 9.

<sup>17</sup> Ministry's initial submission at para 2.

- The Ministry did not respond to the access request by the extended time limit.<sup>18</sup>

[17] As noted above, whether a public body has met its duty to respond to an access request within the timelines specified in s. 7, can be answered in only two ways: either “it did” or “it did not”. In this case, it did not. Therefore, I find that the Ministry has not complied with the statutory time limits in s. 7(2) of FIPPA.

***What is the appropriate remedy?***

[18] Section 58 of FIPPA states the Commissioner must dispose of the issues in an inquiry by making an order under s. 58. In this case, the Ministry acknowledges that it has still not responded to the access request and that it failed to respond to the applicant’s access request in accordance with the statutory time limits imposed by s. 7. The usual remedy in such cases is to order the public body, under s. 58, to respond to the access requests by a particular date.<sup>19</sup>

***Parties’ submissions***

[19] The Ministry attributes its delay in responding to the access request to resource and staffing issues, as well as to the complexity and volume of responsive records captured by the applicant’s access request. As a remedy, the Ministry requests an order allowing it eight months from the date of this order to respond to the access request.<sup>20</sup>

[20] The Ministry provides affidavit evidence from a manager at the Ministry of Citizen Services’ Information Access Operations who says they gathered 201 pages of records responsive to the access request in October 2024.<sup>21</sup> The Ministry says it was ready to send those records after the appropriate sign offs but instead, it reconsidered its interpretation of the access request and concluded that it had not searched for all potentially responsive records.<sup>22</sup>

[21] The Ministry then estimated that the volume of the additional potentially responsive records was large, but it has not conclusively determined if these records are responsive to the request. The Ministry says it asked the applicant to narrow the request on January 29, 2025 but the applicant refused.<sup>23</sup>

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<sup>18</sup> PSA initial submission at para 3.

<sup>19</sup> See for example Order F25-11, 2025 BCIPC 13; F25-09, 2025 BCIPC 9; Order F25-08, 2025 BCIPC 8; Order F16-29, 2016 BCIPC 31, at paras 8-11; Order F24-90, 2024 BCIPC 103 at paras 14-16; Order F23-59, 2023 BCIPC 69 at para 31.

<sup>20</sup> Ministry’s submission at para 19.

<sup>21</sup> Manager’s affidavit at para 15.

<sup>22</sup> Manager’s affidavit at para 16.

<sup>23</sup> Manager’s affidavit at para 17.

[22] The Ministry's Manager says she has been informed that:

- there are 4000 individual records the Ministry plans to search for responsive records;
- those 4000 records comprise approximately 8000 to 12000 pages; and
- more responsive records could be identified while they process the request.<sup>24</sup>

[23] The Manager adds that the Ministry has had to consult with different groups within government relating to the records. In addition, she explains the newly identified potentially responsive records contain sensitive information and must be carefully reviewed to ensure they are severed in accordance with FIPPA. She estimates the Ministry will require two months to search plus six months to respond.

[24] The Manager also says that if the Ministry had asked the OIPC for a time extension, she believes they would have been granted a further 200 business days because there are 8000-12000 pages of records.<sup>25</sup> She says that had the access request not turned into this deemed refusal inquiry, they would have submitted an extension request to the OIPC.<sup>26</sup>

[25] The applicant requests the commissioner deny the Ministry any more time. He points out weaknesses and inconsistencies in the affidavit evidence. The applicant also points to the absence of evidence as to whether the search for additional records the Ministry says it must conduct has even commenced, let alone progressed, in the five months since his access request.

[26] The applicant says the access request is straightforward and requires no clarification. He says the Ministry has failed to justify the delay in seeking the unnecessary clarification and releasing the 201 pages already gathered. The applicant asks for an order requiring the Ministry to immediately release these records.

### *Analysis*

[27] I am satisfied the Ministry already gathered 201 pages of responsive records. Unfortunately, s. 58 does not authorize the commissioner to order a public body to disclose records before the public body has even issued its decision about them under Part 2 of FIPPA. I find that the appropriate remedy in this case is to order the Ministry to respond to the applicant's request as required under Part 2 of FIPPA and to do so by a specific date.

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<sup>24</sup> Manager's affidavit at para 18.

<sup>25</sup> Manager's affidavit at paras 21-22.

<sup>26</sup> *Ibid* at para 21.

[28] The Ministry located responsive records within the statutory time limits but did not release them to the applicant because they decided there might be more responsive records. I do not see any evidence to show whether the search for these additional, potentially responsive records has even begun as of the date of this inquiry which is five months after the access request.

[29] The Ministry does not say, and I fail to see, why the additional search for potentially responsive records did not commence at the earliest opportunity. I also fail to see how that additional search possibly requires two months to conduct. The Ministry also does not say, and I fail to see, why it did not seek clarification of the access request for a period of almost four months.

[30] The Ministry offers no explanation for why it did not request a further time extension from the OIPC. Instead, the Ministry seems to point to this inquiry as the reason for not submitting that request. That reason is, in my view, not a valid reason and does not explain the preceding three months in which they could have submitted that extension request.

[31] The Ministry has not convinced me that it requires two months to conduct the search for additional responsive records. The applicant made the access request on October 7, 2024. The Ministry assessed a fee to process the request which the applicant paid on October 18, 2024. Less than a week later, the Ministry had a package of 201 pages of responsive records ready for internal sign off prior to disclosure.<sup>27</sup> The Ministry then reconsidered the access request and decided that there may be more potentially responsive records.

[32] The Ministry does not say why it reconsidered its original interpretation of the access request. I cannot see why this reinterpretation suddenly gave rise to so many more potentially responsive records or why it would take two months to do the search.

[33] The Ministry has also not convinced me that it will take six months to process the potentially responsive records (after the two months to search). The Ministry has already had five months to process the access request and after the 201 pages were ready for signoff on October 18, 2024, I fail to see what, if any, steps the Ministry has taken to respond to the request.

[34] The Ministry says that in this case, six months is required to process the access request. Six months from October 7, 2024 is April 7, 2025. I have decided April 7, 2025 is the appropriate date by which the Ministry must provide the applicant with a response that complies with Part 2 of FIPPA.

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<sup>27</sup> Manager's affidavit at para 15.



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## CONCLUSION

[35] For the reasons above, I make the following orders under ss. 58(3)(a) and 58(4) of FIPPA:

1. I order the Ministry to perform its duty under s. 7 by responding to the applicant's access request in accordance with Part 2 of FIPPA on or before **April 7, 2025**.
2. I order the Ministry to copy the OIPC's registrar of inquiries on the response the Ministry sends to the applicant in compliance with item 1, above.

March 11, 2025

### ORIGINAL SIGNED BY

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Carol Pakkala, Adjudicator

OIPC File No.: F25-00093